



Idaho Department of Environmental Quality  
**DRAFT §401 Water Quality Certification**

January 14, 2010

NPDES Permit Number: **ID-0020141** City of Driggs

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Pursuant to the provisions of Section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), as amended, 33 USC Section 1341 (a)(1), the Idaho Department of Environmental Quality (DEQ) has authority to review National Pollution Discharge Elimination System (NPDES) permits and issue a water quality certification decision.

DEQ has reviewed the proposed final NPDES permit and associated fact sheet for the above-referenced facility. Based upon its review and consideration of this information, DEQ certifies that if the permittee complies with the terms and conditions imposed by the above-referenced permit along with the conditions set forth in this water quality certification, then there is reasonable assurance the discharge(s) will comply with the applicable requirements of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, including the Idaho Water Quality Standards (WQS) (IDAPA 58.01.02) and other appropriate requirements of state water quality law. This includes the replacement of fecal coliform limits with *E. coli* limits.

This certification does not constitute authorization of the permitted activities by any other state or federal agency or private person or entity. This certification does not excuse the permit holder from the obligation to obtain any other necessary approvals, authorizations or permits.

#### **AMMONIA COMPLIANCE SCHEDULE**

Pursuant to IDAPA 58.01.02.400.03, DEQ authorizes a compliance schedule, and associated interim limits. The City shall comply with the interim limits and requirements set forth in the proposed final permit. On or before February 15, 2013, the City will complete any necessary studies and facility upgrades needed to comply with the final ammonia limits and demonstrate it can meet those final limits. The final limits shall become effective on October 1, 2013. DEQ believes this schedule is the most aggressive implementation of facility improvements that can reasonably occur during this permit. Therefore, the authorized compliance schedule requires compliance as soon as possible.

#### **MIXING ZONES**

Due to the low flow volume of the receiving water DEQ does not authorize the use of mixing zones for this outfall.

## ANTIDEGRADATION

The WQS provide that existing uses and the water quality necessary to protect the existing uses shall be maintained and protected (IDAPA 58.01.02.051.01). In addition, where water quality exceeds levels necessary to support uses, that quality shall be maintained and protected unless the Department finds, after intergovernmental coordination and public participation, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located (IDAPA 58.01.02.051.02).

The City of Driggs discharges its wastewater to a drainage ditch that is a tributary to Woods Creek. The drainage ditch and Woods Creek are nondesignated waters, and as such, DEQ applies cold water aquatic life and primary or secondary contact recreation criteria (IDAPA 58.01.02.101). In addition, all waters of the State are designated for agricultural, industrial, wildlife habitat and aesthetic uses (IDAPA 58.01.02.100.03 to .05). Woods Creek and its named and unnamed tributaries are included on the CWA section 303(d) list of impaired waters for bacteria. A total maximum daily load (TMDL), however, has not yet been developed for Woods Creek and its named and unnamed tributaries.

According to IDAPA 58.01.02.054.03, impaired water bodies are prioritized for TMDL development. For those water bodies that are medium or low priority, IDAPA 58.01.02.054.05 provides that, until a TMDL is developed, DEQ shall require those changes in permitted discharges from point sources necessary to prohibit further impairment of the designated or existing uses. Woods Creek is a medium or low priority water body for TMDL development, and therefore, until DEQ develops a bacteria TMDL, DEQ must ensure the City of Driggs discharge does not further impair uses of Woods Creek.

The limits in the proposed new permit for the City of Driggs are set at levels that ensure the State's numeric and narrative criteria will be met. The numeric and narrative criteria are set at levels which protect and maintain applicable designated and existing uses. Therefore, the limits in the proposed new permit protect and maintain designated and existing uses in Woods Creek and its tributaries. Furthermore, the limits in the proposed new permit are the same or more stringent than the limits in the existing permit. Limits for some pollutants, e.g., ammonia, have been added to the permit for the first time. In order to reflect a change to the WQS, the permit changes the bacteria limits from fecal coliform to *E. coli* limits. The *E. coli* limits, however, are as or more protective of water quality than the old fecal coliform limits. In 1986 EPA updated its criteria to protect recreational use of water recommending an *E. coli* criterion as a better indicator of bacteria levels that may cause gastro-intestinal distress in swimmers than fecal coliform. DEQ subsequently changed its bacteria criterion from fecal coliform to *E. coli*. The limits in the proposed new permit, therefore, ensure that the existing level of water quality in Woods Creek and its tributaries is maintained.

In sum, because the permit includes limits that are the same as or more stringent than the limits in the existing permit, the permit (a) protects and maintains existing uses and the level of water quality necessary to protect existing uses in accordance with IDAPA 58.01.02.051.01; (b) pending a TMDL for bacteria, prohibits further impairment of uses by bacteria in accordance with IDAPA 58.01.02.054.05; and (c) maintains and protects the existing water quality in accordance with IDAPA 58.01.02.051.02.

## **OTHER CONDITIONS**

The certification is conditioned upon the requirement that any material modification of this permit or the permitted activities including without limitation, any modifications of the permit to reflect new or modified TMDL waste load allocations or other new information, shall first be provided to DEQ for review to determine compliance with state Water Quality Standards and to provide additional certification pursuant to section 401.

## **RIGHT TO APPEAL FINAL CERTIFICATION**

The final Section 401 Water Quality Certification may be appealed by submitting a petition to initiate a contested case, pursuant to Idaho Code § 39-107(5), and the Rules of Administrative Procedure Before the Board of Environmental Quality, IDAPA 58.01.23, within thirty-five (35) days of the date of the final certification.

Questions regarding the actions taken in this certification should be directed to Troy Saffle, DEQ (Idaho Falls Regional Office) at (208) 528-2650.

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Erick Neher  
Regional Administrator  
DEQ Idaho Falls Regional Office